

STATE OF MICHIGAN  
COURT OF APPEALS

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DARREN S. CHRETIEN,

Plaintiff-Appellee,

v

CHRISHAUNDA ALBERT,

Defendant,

and

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellant.

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UNPUBLISHED

May 16, 2006

No. 264311

Wayne Circuit Court

LC No. 04-404918-NI

Before: Jansen, P.J., and Neff and Zahra, JJ.

PER CURIAM.

Defendant State Farm Mutual Automobile Insurance Company appeals by leave granted the trial court's order denying its motion for summary disposition. We reverse and remand for entry of judgment in favor of defendant.<sup>1</sup>

Plaintiff has an extensive history of accidental injuries and complaints of pain. The record indicates that plaintiff sustained injuries when he was involved in a 1981 automobile accident. Plaintiff sought treatment for neck injuries, shoulder pain, and chronic headaches, continuing regularly until at least 1993. In 1993, plaintiff was involved in another automobile accident. It is unclear whether this 1993 incident resulted in any physical injuries. Plaintiff again injured his back and neck during a slip-and-fall accident in 1997. An MRI showed a ruptured disc at C6, and plaintiff underwent cervical fusion surgery in 1998. Plaintiff continued to experience chronic neck pain, shoulder pain, back pain, and headaches. Over the years,

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<sup>1</sup> The term "defendant" refers to State Farm Mutual Automobile Insurance Company only. Defendant Chrishaunda Albert is not a party to this appeal.

plaintiff has taken numerous prescription pain medications, and has pursued extensive chiropractic and physical therapy.

In April 2001, plaintiff was involved in the automobile accident underlying this case. Defendant Albert disregarded a stop sign and struck the vehicle in which plaintiff was a passenger. Plaintiff did not report any injuries at the scene of the accident and did not seek immediate medical attention.

Two months later, in June 2001, plaintiff was involved in another automobile accident. The vehicle in which plaintiff was a passenger rolled over after being struck by another automobile. Following this accident, plaintiff sought pain management treatment. Plaintiff was prescribed additional pain medications and received several cervical injections.

Plaintiff commenced this action in February 2004 to recover for injuries allegedly sustained as a result of the April 2001 collision. Because Albert was uninsured, plaintiff sought uninsured motorist coverage from defendant. According to plaintiff, the April 2001 accident had caused neck and shoulder injuries, as well as an exacerbation of his preexisting cervical condition. Plaintiff contended that these injuries constituted a serious impairment of body function. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). Defendant argued that even if plaintiff had in fact sustained the claimed injuries as a result of the April 2001 collision, plaintiff was not able to establish the existence of a serious impairment of body function.

At the hearing on defendant's motion for summary disposition, plaintiff's counsel conceded that there was no "objective finding of a new injury." However, counsel argued that the April 2001 accident had aggravated plaintiff's preexisting cervical condition. Counsel for plaintiff asserted that the aggravation of plaintiff's back condition had caused considerable pain and sleep interruption. Defense counsel responded that it was insufficient for plaintiff to merely show that his condition was "the result of symptomatology that existed as a mere progression of the pre-existing condition." The trial court, apparently misunderstanding the nature of plaintiff's alleged injuries, noted that plaintiff "must be near death for crying out loud." The court believed that the exacerbation of plaintiff's preexisting back condition was sufficient to satisfy the no-fault tort threshold. The court therefore denied defendant's motion for summary disposition.

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition under MCR 2.116(C)(10) is properly granted when there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). We consider the pleadings, affidavits, depositions, and other documentary evidence in the light most favorable to the nonmoving party. *Id.* at 454.

Uninsured motorist coverage permits an injured person to obtain coverage from his own insurance company to the extent that a third-party claim would be permitted against the uninsured motorist. *Rory v Continental Ins Co*, 473 Mich 457, 465; 703 NW2d 23 (2005). "Uninsured motorist benefits are not statutorily required by the no-fault act, and the language of the insurance policy controls." *Cruz v State Farm Mutual Auto Ins Co*, 241 Mich App 159, 167; 614 NW2d 689 (2000), *aff'd* 466 Mich 588 (2002). It is the contract provisions of the insurance policy, and not the requirements under the no-fault act, that determine the insurer's obligation to

provide uninsured motorist coverage to a plaintiff. *Berry v State Farm Mutual Auto Ins Co*, 219 Mich App 340, 346; 556 NW2d 207 (1996). In this case, neither plaintiff nor defendant included a copy of the uninsured motorist provision of plaintiff's insurance policy. However, it is apparent from the parties' arguments that plaintiff would be entitled to coverage pursuant to the uninsured motorist provision only if his injuries would otherwise meet the no-fault tort threshold of MCL 500.3135(1).

A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle if the injured person has suffered, *inter alia*, "serious impairment of body function." MCL 500.3135(1). In evaluating a claim based on an alleged serious impairment of body function, the trial court must first determine (1) that there is no factual dispute concerning the nature and extent of the person's injuries, or (2) if there is a factual dispute, that the dispute is not material to the determination whether the person has suffered a serious impairment of body function. MCL 500.3135(2); *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004). The trial court must then proceed to decide as a matter of law whether the plaintiff has suffered a serious impairment of body function. *Id.* at 132. Defendant argues that even if plaintiff in fact sustained the claimed injuries as a result of the April 2001 accident, those injuries did not constitute a serious impairment of body function under MCL 500.3135. We agree.

In the present action, any dispute regarding the nature and extent of plaintiff's injuries is not material to the determination whether plaintiff has suffered a serious impairment of body function. Thus, the trial court was required to determine as a matter of law whether the exacerbation of plaintiff's injuries constituted a serious impairment of body function. A "serious impairment of body function" is "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). A plaintiff's injuries therefore meet the no-fault threshold only if (1) an important body function has in fact been impaired, (2) the impairment is objectively manifested, and (3) the impairment affects the plaintiff's general ability to lead his or her normal life. *Kreiner, supra* at 132-133.

The determination whether an injury has affected a person's general ability to lead his or her normal life requires comparing the person's life before and after the accident, as well as the significance of any affected aspects on the course or trajectory of the person's overall life. *Id.* at 132-133. "Merely 'any effect' on the plaintiff's life is insufficient because a de minimis effect would not, as objectively viewed, affect the plaintiff's 'general ability' to lead his life." *Id.* at 133 (emphasis in original). Our Supreme Court has articulated several factors to be considered in determining whether an injury has affected a person's general ability to lead his or her normal life:

(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery. This list of factors is not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves.

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Instead, in order to determine whether one has suffered a “serious impairment of body function,” the totality of the circumstances must be considered, and the ultimate question that must be answered is whether the impairment “affects the person’s general ability to conduct the course of his or her normal life.” [*Id.* at 133-134 (footnote omitted).]

“A negative effect on a particular aspect of an injured person’s life is not sufficient in itself to meet the tort threshold, as long as the injured person is still generally able to lead his normal life.” *Id.* at 137.

At the time of the April 2001 automobile collision, plaintiff had no complaints of new injury. About two days later, plaintiff reported complaints of neck and shoulder pain. It is undisputed that plaintiff suffered significant back, shoulder, and neck pain, as well as headaches, before the April 2001 accident. Any aggravation of plaintiff’s preexisting back, shoulder, and neck injuries is therefore difficult to quantify.

Although plaintiff suggests that his pain increased after the April 2001 automobile accident, he fails to explain how this increase in symptoms has affected his general ability to lead his normal life. Stated another way, plaintiff cannot demonstrate that he now leads his life differently than he led his life before the accident. Plaintiff presents no evidence that the increase in symptoms has affected the overall course or trajectory of his life. He does not specify any particular pre-accident activities in which he is no longer able to participate. Nor does he sufficiently identify how any specific aspects of his pre-accident lifestyle have been altered by the April 2001 accident. While plaintiff claims that his ability to sleep and to exist without pain have been generally affected by the aggravation of his preexisting injuries, he presents no medical evidence of post-accident sleeplessness. Nor does he explain how his ability to exist without pain is in any way different than it was before the April 2001 accident, at which time he was already suffering from substantially similar neck, shoulder, and back pain.

Given the fact that plaintiff’s pre-accident life was already characterized by substantial pain, and in light of plaintiff’s failure to demonstrate how his lifestyle was changed by the April 2001 collision, we cannot conclude as a matter of law that the course or trajectory of plaintiff’s normal life has been affected. We acknowledge that plaintiff is certainly inconvenienced by his chronic pain. However, after comparing plaintiff’s pre-accident and post-accident lifestyles, we find that the April 2001 accident has not affected plaintiff’s general ability to lead his normal life. In light of *Kreiner*, it was not enough for plaintiff to show that the aggravation of his preexisting injuries had *some* effect on his life. Rather, he was required to show that his resultant injuries, as aggravated, affected the overall trajectory of his life. *Id.* at 131-132. Here, the evidence presented by plaintiff reflects that he is leading essentially the same lifestyle, albeit a painful one, that he led before the accident. Plaintiff’s injuries fail as a matter of law to constitute a “serious impairment of body function” within the meaning of MCL 500.3135.<sup>2</sup> The trial court erred in denying defendant’s motion for summary disposition.

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<sup>2</sup> In light of our conclusion that plaintiff’s injuries have not affected his general ability to lead his  
(continued...)

Given our resolution of the issues, we do not reach defendant's arguments that the trial court made insufficient findings or that plaintiff's brief should have been stricken as nonconforming. Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Janet T. Neff

/s/ Brian K. Zahra

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(...continued)

normal life, we decline to address whether the injuries were objectively manifested. We thus need not consider defendant's argument that *Rakestraw v General Dynamics Land Systems, Inc.*, 469 Mich 220; 666 NW2d 199 (2003), applies in the context of automobile negligence. Similarly, although we recognize that aggravation of a preexisting injury may constitute an impairment for purposes of the no-fault act, *Wilkinson v Lee*, 463 Mich 388, 394-395; 617 NW2d 305 (2000), we decline to consider whether plaintiff's injuries constituted an impairment in this case.